

**EMPLOYMENT APPEALS BOARD DECISION**  
**2021-EAB-0374**

*Reversed*  
*Benefits Payable ~ Week 13-20*

**PROCEDURAL HISTORY:** On October 19, 2020, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant was not eligible for unemployment insurance benefits from March 22, 2020 through March 28, 2020 (week 13-20), during a break between academic terms, because he was likely to return to work after the break (decision # 70723). Claimant filed a timely request for hearing. On April 30, 2021, ALJ Janzen conducted a hearing at which the employer failed to appear, and on May 4, 2021 issued Order No. 21-UI-166104, affirming decision # 70723. On May 7, 2021, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) On August 11, 2020, the Department filed an initial claim for regular unemployment insurance benefits on claimant's behalf<sup>1</sup> and backdated the claim to the week of March 15, 2020 through March 21, 2020 (week 12-20). The Department determined that claimant's base year was October 1, 2018 through September 30, 2019.

(2) During claimant's base year, claimant worked for two employers. One of the employers, Portland State University (PSU), was an educational institution. The other employer, 99 Musicians Club, was not an educational institution. The Department determined that based on wages from both employers, claimant had a monetarily valid claim with a weekly benefit amount of \$158.

(3) Claimant worked for PSU in an instructional capacity and had a contract to teach one general class per academic term from September 15, 2019 through June 15, 2020. For the winter term, PSU paid claimant \$1,043.00 for eleven weeks of instruction for the general class, which was approximately \$94.81 per week. For the winter term, PSU also paid claimant \$69.00 per week to

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<sup>1</sup> In February of 2020, claimant filed a claim with the Department for Pandemic Unemployment Assistance (PUA) benefits. The Department reviewed and denied the claim, but concluded claimant might be eligible for regular unemployment benefits. For that reason, on August 11, 2020, the Department filed a regular benefit claim on claimant's behalf and backdated it to week 12-20. Transcript at 4-5.

teach a private class attended by one student. For the spring term, PSU paid claimant only \$1,043.00 for eleven weeks of instruction for the general class. During the 2019-2020 winter term, claimant earned more than \$158.00 from PSU during more than one week.

(4) PSU's winter term for students ended on March 21, 2020. PSU's spring term began on March 30, 2020. PSU's break period between the winter and spring terms was March 22, 2020 through March 29, 2020. Both claimant and PSU expected claimant to return to work for the spring term and teach the general class only in return for \$1,043.00 for eleven weeks of instruction.

(5) Claimant claimed benefits for the week of March 22, 2020 through March 28, 2020 (week 13-20), the week at issue.

**CONCLUSIONS AND REASONS:** Claimant did not have reasonable assurance of continuing employment during week 13-20, and benefits for that week are payable to claimant if claimant is otherwise eligible.

ORS 657.167(1) and (2) prohibit benefits based upon services for an educational institution performed in an instructional, research or principal administrative capacity from being paid "for any week of unemployment commencing during the period between two successive academic years or" terms, "if such individual performs such services in the first of such academic years or terms and if there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any institution in the second of such academic years or terms." In sum, the conditions that must be met for the between-terms school recess denial to apply to claimant are these: (1) the week(s) claimed must commence during a period between two academic terms; (2) claimant must not have been "unemployed" during the term prior to the recess period at issue; and (3) there is reasonable assurance of work during the term following the recess period at issue.

Order No. 21-UI-166104 concluded that claimant worked for an educational employer in an instructional capacity during claimant's base year, that the week claimed commenced during a period between two academic terms, and that claimant was not unemployed during the term prior to the recess period at issue. Order No. 21-UI-166104 at 3-4. The preponderance of the evidence in the record supports those conclusions. The order also concluded that claimant had reasonable assurance of returning to work for PSU during the term following the recess period, and for that reason, claimant was not eligible for benefits during the period between PSU's 2020 winter and spring terms. Order No. 21-UI-166104 at 5. However, the record does not support that conclusion.

OAR 471-030-0075 (April 29, 2018) states, in relevant part:

(1) The following must be present before determining whether an individual has a contract or reasonable assurance:

(a) There must be an offer of employment, which can be written, oral, or implied. The offer must be made by an individual with authority to offer employment.

(b) The offer of employment during the ensuing academic year or term must be in the same or similar capacity as the service performed during the prior academic

year or term. The term ‘same or similar capacity’ refers to the type of services provided: i.e., a ‘professional’ capacity as provided by ORS 657.167 or a ‘nonprofessional’ capacity as provided by ORS 657.221.

(c) The economic conditions of the offer may not be considerably less in the following academic year, term or remainder of a term than the employment in the first year or term. The term ‘considerably less’ means the employee will not earn at least 90% of the amount, excluding employer paid benefits, than the employee earned in the first academic year or term, or in a corresponding term if the employee does not regularly work successive terms (i.e. the employee works spring term each year).

\* \* \*

Although claimant had a valid, written offer of employment in a professional capacity to teach a general class for PSU during the spring term of 2020, under OAR 471-030-0075(1)(c), the economic conditions of the employer’s offer were “considerably less” than the economic conditions of PSU’s employment offer to claimant for the preceding winter term. Claimant was paid \$1,043.00 over 11 weeks to teach the general class for each term, which was \$94.81 per week. ( $\$1,043.00 \div 11 \text{ weeks} = \$94.81 \text{ per week}$ ). He also was paid \$69.00 per week during the winter term to teach a private class. The Department’s witness testified that claimant earned \$163.81 per week during the winter term teaching both classes. Transcript at 9-10. ( $\$94.81 + \$69.00 = \$163.81$ ). Claimant testified that he did not teach the private class in the spring, resulting in a loss of income of \$69.00 per week. Transcript at 18. Comparing the “amount earned” by claimant for each term, for the spring term claimant earned approximately 58% of the total amount he earned for the winter term ( $\$94.81 \div \$163.81 = .57878029$  or 58%). Because claimant was not scheduled to earn at least 90% of the amount he earned for the winter term, he was scheduled to earn “considerably less” for the spring term under OAR 471-030-0075(1)(c), and he therefore did not have reasonable assurance.

Claimant did not have reasonable assurance of continuing employment during the week of March 22, 2020 through March 28, 2020 (week 13-20), and benefits for that week are payable to claimant if he is otherwise eligible.

**DECISION:** Order No. 21-UI-166104 is set aside, as outlined above.

D. Hettle and A. Steger-Bentz;  
S. Alba, not participating.

**DATE of Service: June 15, 2021**

**NOTE:** This decision reverses an order that denied benefits. Please note that payment of benefits, if any are owed, may take approximately a week for the Department to complete.

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem,

Oregon 97310 or visit the Court of Appeals website at [courts.oregon.gov](https://courts.oregon.gov). Once on the website, use the 'search' function to search for 'petition for judicial review employment appeals board'. A link to the forms and information will be among the search results.

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# Understanding Your Employment Appeals Board Decision

## English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

## Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

## Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyong ito.

## Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

## Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

## Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

**Khmer**

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

**Laotian**

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນໍາສານອຸທອນລັດ Oregon ໄດ້ ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

**Arabic**

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

**Farsi**

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

**Employment Appeals Board - 875 Union Street NE | Salem, OR 97311**  
 Phone: (503) 378-2077 | 1-800-734-6949 | Fax: (503) 378-2129 | TDD: 711  
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